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Life Insurance Coverage of Air Passengers

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LIFE INSURANCE COVERAGE OF AIR PASSENGERS

DATA recently released on the aviation underwriting practices of 100 United States life insurance companies reveals a definitely progressive trend in the outlook of these important organizations on the safety and future of travel by air. The figures in Tables 1 and 2 reflect this development, and show in dollars and cents the extent of the vast improvement which has occurred since 1918. This is encouraging in light of the past inflexibilities reflected below.

At the end of World War I, insurance companies were faced with a continually increasing number of claims for death incurred through air travel. With no basis in experience for actuarial figures, and in fear of the danger of the new transportation, the companies almost without exception refused coverage to the air passenger in new life insurance policies. The efforts of the companies to define the risks to be excluded from coverage led to clauses varying widely in content and still more widely in judicial interpretation.[1] And when continued expansion of airline travel and steady reduction of passenger fatalities induced the companies to extend coverage to passengers on scheduled commercial flights, the clauses became even more susceptible of varying interpretations. An examination of the cases indicates that the confusion in the courts still exists, at least as regards policies issued prior to the 1940's.

The earliest risk exclusion clauses were almost uniformly to the effect that "participation in aviation" or "engaging in aviation," with the word "aeronautics" occasionally substituted for "aviation," was a risk not covered by the policy. The interpretations of these clauses, though not uniform, until about the middle 1930's held that one who rode merely as a passenger was "participating," but was not "engaging." Thus, a "participating" clause precluded recovery on the policy, while an "engaging" clause did not. "Participating" was held to mean "to have a part of"[2] and a passenger was thought to come within that definition. "Engaging" was early thought to connote more habitual activity than an occasional passenger ride, as well as indicating an occupational participation, as pilot or crewman.

But these interpretations were by no means uniformly accepted until the late 1930's. At that time the courts began to interpret even "participating" as meaning something more than the activity of a mere passenger,[3] and the cases today involving clauses with either "participating" or "engaging" quite uniformly hold for recovery by the beneficiary.[4] Those clauses that excluded "participating" or "engaging in aeronautic operations or expeditions" are even more apt to lead to recovery on the policy. The *Dyess case*,[5]

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[1] Glass, *Aeronautic Risk Exclusion in Life Insurance Contracts* 7 J. Air L. 305 (1936).

[2] *Bew v. Travelers Insurance Co.*, 95 N.J.L. 533, 112 Atl. 859 (1921).

[3] *Mutual Benefit Health & Acc. Ass'n v. Bowman*, 99 F. (2d) 856 (C.C.A. 8th 1938); *Mutual Benefit Health & Acc. Ass'n v. Moyer*, 94 F. (2d) 906 (C.C.A. 9th 1938); *Mass. Protect. Ass'n v. Bayersdorfer*, 105 F. (2d) 595 (C.C.A. 6th 1939); *Chappell v. Commercial Cas. Ins. Co.*, 120 W. Va. 262, 197 S.E. 723 (1938).

[4] *Lee v. Guardian Life Ins. Co.*, 46 N.Y.S. (2d) 241 (1944); *Funk v. New York Life Ins. Co.*, 60 N.Y.S. (2d) 349 (1946).

[5] "If a novitiate boarded an unbroken mustang, it would doubtless prove to be a hazardous event, but would not accurately be spoken of as an 'expedition'." *Equitable Life Assur. Soc. v. Dyess*, 194 Ark. 1023, 109 S.W. (2d) 1263 (1937).

decided in 1937, held that "operations" required more activity than found in a passenger, and that an "expedition" was more than just a hazardous event. Clauses limited to excluding "participating or engaging in aviation or aeronautics," and those that add the words "operations" or "expeditions," are quite uniformly interpreted in favor of the insured passenger.[6]

That unanimity ceases, however, as soon as other qualifying words are used. An early attempt to bring the mere passenger within the exclusion was the use of the words "as passenger or otherwise." That usage has caused more variance in judicial interpretation than any other. A most striking example of the divergent interpretations is afforded by two cases involving identical fact situations, *National Bank of Commerce v. New York Life Insurance Co.*[7] *and Ivy v. New York Life Insurance Co.*[8] In each case the insured was killed in a crash while flying as a fare-paying passenger on a regular airline flight. The exclusion clauses involved were substantially identical, to the effect that the benefits of the policy would not be paid for death resulting from "engaging as a passenger or otherwise in aeronautic operations." In the *National Bank* case the court held that if the clause had been only "engaging in aeronautic operations" the passenger clearly would not have been excluded. And, said the court, the passenger must first come within the general description of "engaging in — operations" before the words "as passenger or otherwise" can come into play.

A mere passenger not taking a part in the operation of the craft is not excluded and the beneficiary may recover. In the *Ivy* case the qualification was more effective. The court held that if the clause had merely excluded "engaging in operations" the insured would not have been excluded, but the use of the extra words clearly brings the passenger within the scope of the exclusion. The *Christen* case,[9] decided in a United States District Court in Illinois, involved substantially the same clause and fact situation as these two cases and the result was in line with the *Ivy* decision.

It is difficult to choose between the two opposite results reached in these cases. It seems obvious at first glance that the words "as passenger or otherwise" would be clear enough to exclude all passengers whether participating in operations or not; yet there are good arguments to support the view that such a clause means only those passengers who are actually taking some part in the operation of flying.[10] Clearly a passive passenger is in no sense operating the plane; nor would a prospective insurance buyer think of himself as "engaging in aeronautics"[11] if he were to be a mere passenger. Quite obviously, the courts have had difficulty with this. Of ten cases decided since 1936 in which the words "as passenger or otherwise" have been of major significance, five have allowed recovery and five have denied it to the beneficiary.[12]

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[6] Cases cited in notes 4, 5, 6, *supra.*

[7] *Nat'l Bank of Commerce v. New York Life Ins. Co.*, 181 Tenn. 299, 181 S.W. (2d) 151 (1944).

[8] *Ivy v. New York Life Ins. Co.*, 33 F. Supp. 841 (DC ND Ala. SD 1940).

[9] *Christen v. New York Life Ins. Co.*, 19 F. Supp. 440 (N.D. Ill. 1937).

[10] This view is strengthened by the fact that the risk is greater and more apt to be excluded where the passenger takes part in the operation, while a mere fare-paying passenger is a lesser risk. Further weight to this view is added by the fact that those companies that do extend coverage to fare-paying passengers on regular airlines do so without appreciable additional cost. *Nat'l Bank v. New York Life Ins. Co.*, 181 Tenn. 299, 181 S.W. (2d) 151 (1944).

[11] *Hartol v. Prudential Ins. Co.*, 290 N.Y. 44, 47 N.E. (2d) 687 (1943).

[12] Recovery permitted: *Hartol Products Corp. v. Prudential Ins. Co.*, 290 N.Y. 44, 47 N.E. (2d) 687 (1943); *Funk v. New York Life Ins. Co.*, 60 N.Y.S. (2d) 349 (1946); *Lee v. Guardian Life Ins. Co.*, 46 N.Y.S. (2d) 241 (1944); *Equit. Life Assur. Soc. v. Dyess*, 194 Ark. 1023, 109 S.W. (2d) 1263 (1937); Recovery denied: *Christen v. New York Life Ins. Co.*, 19 F. Supp. 440 (N.D. Ill.

In light of the decisions, it is apparent that use of the words "engaging in operations" combined with "as passenger or otherwise" makes for ambiguity. It is significant that in all five cases in which recovery has been allowed, notwithstanding the exclusion clause, the courts have relied to some extent on the doctrine than any ambiguity in an insurance contract will be construed strictly against the insurer.[13] In fact, as one writer noted in 1936,[14] this doctrine is recognized in almost all cases in which the beneficiary is allowed to recover.

Where the exclusion clause has not included any of the words that have given so much trouble, as "engaging," "participating," and "operations," "expeditions," and has been composed of words more descriptive of the status of a mere passenger,[15] the insurance companies have defended more successfully. In fact, under these exclusion clauses recovery has been precluded under some rather unusual circumstances. In the *Barringer* case,[16] involving a clause limiting liability if death "resulted from riding in any aircraft," the insured was an Army major en route as a passenger in an army plane from Puerto Rico to Trinidad. His plane flew out over the ocean and was never heard from again. In the *Rossman* case[17] a pilot of a small plane made a forced landing safely on the water 50 feet from shore. He was drowned in the cold water before he could reach shore. The clause that precluded recovery read ". . . as a result, directly, or indirectly, of travel or flight in any aircraft." In the *Richardson* case,[18] a clause that read "not liable for death . . . caused by an aerial conveyance" precluded recovery when the insured was forced to jump in his parachute when the fog bound plane in which he was a passenger ran out of gas. His parachute failed to open. Said the court, "It was the airplane that placed this unfortunate individual 3500 feet in the air."

In three other cases, the courts have denied recovery under circumstances equally removed from the flight itself. In two cases[19] the clauses were almost identical, that there would be no liability for death from "participation in aeronautics"; in the third[20] there would be no liability for death from "engaging as a passenger or otherwise in aeronautic operations." In all three cases there was indisputable evidence, eye witness accounts in two of the three cases, that the insured had gotten safely out of the airplane after forced landings on the water and that death occurred solely from drowning.

1937); *Nat'l Exchange Bank v. New York Life Ins. Co.*, 19 F. Supp. 790 (W.D. Pa. 1937); *Ivy v. New York Life Ins. Co.*, 33 F. Supp. 841 (N.D. Ala. 1940); *Reed v. Home State Life Ins. Co.*, 186 Okla. 226, 97 P. (2d) 53 (1939); *Beveridge v. Jefferson Standard Life Ins. Co.*, 120 W. Va. 256, 197 S.E. 721 (1938).

[13] 29 Am. Jur. 180, Insurance §166. "If insurer meant to exclude . . . liability, why didn't it say so plainly so that any wayfaring man, though a fool, might not be deceived thereby." *Equit. Life Assur. Soc. v. Dyess*, 194 Ark. 1023, 109 S.W. (2d) 1263 (1937).

[14] Glass, *op. cit. supra* in note 1, at 328.

[15] Not using words engaging, participating, expeditions, or operations. Replaced by clause similar to ". . . from operating, or riding in, any kind of aircraft," or ". . . service, travel or flight in any species of aircraft."

[16] *Barringer v. Prudential Ins. Co.*, 153 F. (2d) 224 (C.C.A. 3d 1946).

[17] *Rossman v. Metropolitan Life Ins. Co.*, 71 F. Supp. 592 (S.D. Me. 1947); *Accord, Green v. Mutual Benefit Life Ins. Co.*, 144 F. (2d) 55 (C.C.A. 1st 1944).

[18] *Richardson v. Iowa State Traveling Men's Ass'n*, 228 Iowa 319, 291 N.W. 408 (1940); *Accord, Knouse v. Equit. Life Ins. Co.*, 163 Kan. 213, 181 P. (2d) 310 (1947).

[19] *Neel v. Mutual Life Ins. Co.*, 131 F. (2d) 159 (C.C.A. 2d 1942); *King v. Order of United Commercial Travelers*, 65 F. Supp. 740 (W.D. S.C. 1946). The fact that in these cases the insured had been the pilot is immaterial since their activity in the plane had nothing to do with their death.

[20] *Hart v. New England Mutual Life Ins. Co.*, 1943 USAvR 38, (N.D. Cal. 1942).

Table I — Aviation Passengers* — Summary of Underwriting Practices of 100 U. S. Life Insurance Companies**

U. S. Scheduled Flights	1935 No. of Co's	1935 No. Hrs. Without Extra Premium	1935 Min. Extra Premium Per $1,000	1940 No. of Co's	1940 No. Hrs. Without Extra Premium	1940 Min. Extra Premium Per $1,000	1946 No. of Co.'s	1946 No. Hrs. Without Extra Premium	1946 Min. Extra Premium Per $1,000	1948 No. of Co's	1948 No. Hrs. Without Extra Premium	1948 Min. Extra Premium Per $1,000
Accept Standard, no limitations	6			11			81			83		
Accept standard, limit on amt. only	10			11			9			9		
Accept, limit with extra premium	36			38			7			3		
Most liberal		100	$1.00		200	$1.00		300	$2.00		300	$2.00
Most frequent		50	2.50		100	2.50		250	....		250	....
Individual consideration	38			31			3			5		
Decline or exclude air risk	10			9			0			0		
Total	100			100			100			100		
Non-Scheduled Commercial												
Accept Standard, no limitations	0			0			22			25		
Accept standard, limit on amt. only	1			2			9			10		
Accept, limit with extra premium	21			27			28			15		
Most liberal		50	$1.00		75	$1.00		100	$2.00		100	$2.00
Most frequent		10	5.00		20	2.50		50	2.50		50	2.50
Individual consideration	50			42			36			45		
Decline or exclude air risk	28			29			5			5		
Total	100			100			100			100		
Private Pleasure												
Accept Standard, no limitations	0			0			21			34		
Accept standard, limit on amt. only	1			1			9			8		
Accept, limit with extra premium	19			24			24			12		
Most liberal		90	$1.00		50	$1.00		150	$2.00		100	$2.00
Most frequent		10	5.00		20	2.50		50	....		50	2.50
Individual consideration	52			43			41			41		
Decline or exclude air risk	28			32			5			5		
Total	100			100			100			100		
Military												
Accept Standard, no limitations	0			0			5			14		
Accept standard, limit on amt. only	0			0			4			2		
Accept, limit with extra premium	4			6			9			12		
Most liberal		50	$1.00		200	$1.00		150	$2.00		200	$2.00
Most frequent		0	....		0	....		0	2.00		...	2.50
Individual consideration	61			56			61			59		
Decline or exclude air risk	35			38			21			13		
Total	100			100			100			100		

*For underwriting purposes passengers are also classified "Western Hemisphere Scheduled," "World-Wide Scheduled," "Company-Owned Business Planes."

**Selected data from tables issued by the Division of Statistics and Research of the Institute of Life Insurance in New York City in May, 1949.

Table II — Pilots and Crews — Summary of Underwriting Practices of 100 U. S. Life Insurance Companies*

	1935			1940			1946			1948		
U. S. Scheduled Flights	No. of Co's	Min. Extra Premium Per $1,000	Max. Amt. Ins. Issued	No. of Co's	Extra Premium Per $1,000	Max. Amt. Ins. Issued	No. of Co's	Min. Extra Premium Per $1,000	Max. Amt. Ins. Issued	No. of Co's	Min. Extra Premium Per $1,000	Max. Amt. Ins. Issued
Accept, extra premium only	5			8			51			42		
Most liberal		$25.00			$12.00			$ 2.50			$ 2.50	
Most frequent		25.00			25.00			3.00			3.00	
Accept, limit with extra premium	30			36			39			51		
Most liberal		15.00	$20,000		12.00	$20,000		2.50	$60,000		2.50	$150,000
Most frequent		25.00	10,000		25.00	10,000		3.00	25,000		3.00	25,000
Individual consideration	31			24			3			1		
Decline or exclude air risk	34			32			7			6		
Total	100			100			100			100		
Non-Scheduled Commercial												
Accept, extra premium only	3			8			45			37		
Most liberal		$25.00			$12.00			$ 2.50			$ 3.00	
Most frequent		25.00			25.00			5.00			5.00	
Accept, limit with extra premium	22			22			36			43		
Most liberal		24.00	$20,000		10.00	$20,000		3.00	$50,000		3.00	$50,000
Most frequent		25.00	10,000		25.00	5,000		5.00	10,000		5.00	25,000
Individual consideration	35			32			11			14		
Decline or exclude air risk	40			38			8			6		
Total	100			100			100			100		
Private Pleasure												
Accept, extra premium only	4			6			43			40		
Most liberal		$25.00			$10.00			$ 5.00			$ 5.00	
Most frequent		25.00			25.00			5.00			5.00	
Accept, limit with extra premium	18			23			35			46		
Most liberal		12.00	$25,000		7.50	$50,000		5.00	$50,000		5.00	$50,000
Most frequent		15.00	10,000		12.00	5,000		5.00	10,000		5.00	25,000
Individual consideration	37			33			15			8		
Decline or exclude air risk	41			38			7			6		
Total	100			100			100			100		
Military												
Accept, extra premium only	2			5			22			26		
Most liberal		$12.00			$12.00			$ 5.00			$ 5.00	
Most frequent		12.00			12.00			6.00			5.50	
Accept, limit with extra premium	22			24			27			42		
Most liberal		8.00	$50,000		7.50	$15,000		5.00	$50,000		2.50	$25,000
Most frequent		12.00	10,000		12.00	5,000		6.00	10,000		5.50	25,000
Individual consideration	36			30			28			20		
Decline or exclude air risk	40			41			23			12		
Total	100			100			100			100		

*For underwriting purposes pilots and crew are also classified "Western Hemisphere Scheduled," "World-Wide Scheduled," "Company-Owned Business Planes," "Owner Operators."

The fact that none of these three clauses includes language as wide as that in the others cited makes the result even more interesting.

A contrary result was reached in *Bull v. Sun Life Assur. Co. of Canada*,[21] where the beneficiary under a policy containing one of the more efficacious clauses, but no military exclusion clause, was allowed to recover. The insured, unharmed himself, had been shot down in his navy plane and while attempting to inflate his life raft was killed by gunfire from a strafing Jap plane. The court said "aviation may have been a contributing cause, but that did not make death an indirect result of aviation. No risk of aviation resulted in death. A risk of war resulted in death."

Of particular interest in the past few years have been decisions interpreting policies on men killed in service.[22] Generally, exclusion clauses that would have relieved the company of liability for death in civilian passenger flights were held also to preclude recovery for death on military flights. Of special significance among these cases are five in which there were no clauses excluding recovery because of military flights. This fact precludes any thought that the courts might have interpreted the aviation and the military exclusion clauses together. In fact, one policy contained an express provision, "This policy is free of conditions as to . . . military . . . service."[23] But it had an exclusion clause against liability for death from ". . . riding in any kind of aircraft. . . ." The beneficiary contended that the company was charged with knowledge that the insured might enter the military air service and be killed in military flight and that the insured was not excluded from coverage in such flight. The court held otherwise and found for the company.

There are, however, three cases[24] involving military air travel deaths where recovery has been allowed under circumstances which make them irreconcilable with the others. The *Schifter* case is in conflict with the *Durland* decision cited above. In the latter, the company had expressly stated that the policy was free from conditions as to military service, yet recovery was precluded under the aeronautical exclusion clause. In the *Schifter* case, which contained an aeronautical exclusion clause, the company had agreed by a rider on the policy that the coverage of the policy would continue ". . . regardless of those provisions which except from payment any claims arising where he has entered the armed forces of the Nation in time of war. . . ." Here the court followed the line of reasoning of the beneficiary in the *Durland* case, that the company knew the insured might go into the air force, and allowed recovery on the policy.

As a result of the tremendous increase in passenger travel on regular airlines and because of the great increase in safety, many insurance com-

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[21] *Bull v. Sun Life Assur. Co.*, 141 F. (2d) 456 (C.C.A. 7th 1944). ". . . death as result of service, travel or flight in any species of aircraft . . ."

[22] *Barringer v. Prudential Ins. Co.*, 153 F. (2d) 224 (C.C.A. 3d 1946); *Bull v. Sun Life Assur. Co.*, 141 F. (2d) 456 (C.C.A. 7th 1944); *Green v. Mutual Life Ins. Co.*, 144 F. (2d) 55 (C.C.A. 1st 1944); *Burns v. Mutual Benefit Life*, 79 F. Supp. 847 (W.D. Mich. 1948); *Hyfer v. Metropolitan Life*, 318 Mass. 175, 61 N.E. (2d) 3 (1945); *Schifter v. Commercial Travelers*, 50 N.Y.S. (2d) 376 (1944); *Quinones v. Life Cas. Ins. Co.*, 209 La. 76, 24 So. (2d) 270 (1945); *Knouse v. Equit. Life*, 163 Kan. 213, 181 P. (2d) 310 (1947); *Durland v. New York Life*, 61 N.Y.S. (2d) 700 (1946); *Conaway v. Life Ins. Co. of Va.*, 148 Ohio St. 598, 76 N.E. (2d) 284 (1947); *Richardson v. Iowa State Traveling Men's Ass'n*, 228 Iowa 319, 291 N.W. 408 (1940).

[23] *Durland v. New York Life*, 61 N.Y.S. (2d) 700 (1946).

[24] *Schifter v. Commercial Trav. Mut.*, 50 N.Y.S. (2d) 408 (1944); *Conaway v. Life Ins. Co. of Va.*, 148 *Ohio St.* 598, 76 N.E. (2d) 284 (1947); *Bull v. Sun Life Assur.*, 141 F. (2d) 456 (C.C.A. 7th 1944).

panies have begun writing their ordinary life insurance policies to cover the insured while he is a "fare-paying passenger" on a licensed, regularly scheduled airline.[25] Two recent cases have litigated the question of what is a "fare-paying passenger" under these clauses. The results are in conflict, recovery being allowed where it appears that it should be denied, and vice versa. In the *Quinones* case[26] an army officer was riding a civilian transport DC-2 type plane, used to transport army personnel and supplies. Its pilot was an army pilot. The court decided there was nothing in the policy to distinguish between military and civilian aircraft, nor between military and civilian airfields so long as they were "definitely established." And since a civilian employee riding at his employer's expense would certainly be a "fare-paying passenger" this army officer riding at the expense of his "employer" was also a "fare-paying passenger." Recovery was allowed. In the *Krause* case[27] insured was riding in a TWA plane on a pass. The regular fare was $94.03. Insured had paid an $8.00 service charge and was thenceforth treated as a passenger so far as anything pertinent to life insurance coverage was concerned. When he was killed in a crash it was held that "fare-paying passenger" meant one who had paid the legal, or full, fare. These two decisions are somewhat incongruous when the purpose of the "fare-paying passenger" qualification is recognized as being to limit liability to the safest of air transport, the certificated air carriers.

In an article dated 1936, one writer offered as the least ambiguous, most efficacious means of clearly defining the risk excluded the following clause[28]: "Death resulting directly or indirectly from service or travel while in, on, or near, as a passenger or otherwise, any vehicle or mechanical device for aerial flight or ascension." The lapse of twelve years has proven him a good prophet. In cases involving exclusion clauses similar to this the insurance companies have fared much better than in the early ones. There is this qualification to be suggested, that the use of the words ". . . as a passenger or otherwise" has not been as helpful as it would appear they might be. The elimination of the more restrictive words "engaging" and "participating," "operations" and "expeditions" has done more to clarify the limits of liability than anything else. The insurance companies still face a number of years in which they can expect claims on old policies issued at a time when those words were used, and almost without exception the courts have treated insurance contracts as subject to interpretation, not as of the day they were written, but in the light of current conditions.[29]

Probably the reluctance of insurance companies to extend coverage to air passengers was understandable to begin with. The fatality rate as late as 1930 was 28.6 per 100,000,000 passenger miles,[30] far above that of other transportation. To cover such passengers might have required a premium increase in ordinary life insurance policies that would have made their sale difficult. But by 1935 the rate had dropped amazingly to 4.8 per 100,000,000

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[25] One of the most common clauses is "from operating, or riding in, any kind of aircraft except as a fare-paying passenger in a licensed passenger aircraft operated by a licensed pilot on a regular passenger route between definitely established airports."

[26] *Quinones v. Life & Cas. Ins.*, 209 La. 76, 24 So. (2d) 270 (1945).

[27] *Krause v. Pacific Mut. Life Ins. Co.*, 141 Nebr. 844, 5 N.W. (2d) 229 (1942). *Cf. Burns v. Mut. Ben. Life*, 79 F. Supp. 847 (W.D. Mich. 1948).

[28] Glass, *op. cit. supra* in note 1, 305, 583.

[29] *Id.* at 333. *Mass. Protect. Ass'n v. Bayersdorfer*, 105 F. (2d) 595 (C.C.A. 6th 1939); *Marks v. Mut. Life Ins.*, 96 F. (2d) 267 (C.C.A. 9th 1838); *King v. Equit. Life Assur. Soc.*, 232 Iowa 541, 5 N.W. (2d) 845 (1942).

[30] Kelly, *Aviation and Insurance*, Address to The International Claim Ass'n at Chateau Frontenac, Quebec, Canada, p. 2 (1946).

passenger miles[31] and by 1945 to 2.14 per 100,000,000.[32] Yet in 1935 only 4 companies, out of 104 questioned, extended coverage to the airline passenger in ordinary life policies, and in 1945, when passenger fatalities numbered less per passenger mile than in automobiles,[33] only 68 of those 104 companies insured airline passengers in their ordinary life policies.[34] One wonders why it is not now common practice to insure the airline passenger without exception as to travel on scheduled flights. In the eight years from 1941 through 1948 the fatality rate per passenger mile in airline travel has been lower than that of the automobile in all but two years, 1942 and 1947,[35] yet no insurance company excludes death from auto accident as an insurance risk.

It seems reasonable to suggest that scheduled air travel has attained a safety status that leaves insurance companies with no real justification for further exclusion. Indeed, granting a technical legal right to contract only for those risks they wish to cover, the insurance companies may well be said to have a public duty in this matter. The average insurance purchaser is relatively inexperienced in reading the fine print in voluminous contracts and beyond one or two obviously necessary exclusions, such as death by suicide or war risk, it appears that companies have a duty to keep the terms as simple as possible. What average man today would question, as he steps aboard a nationally known airline plane, that his family would benefit from his life insurance policy if he were killed? Let the reader ask himself if his policies would cover him as an airline passenger.

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[31] *Ibid.*
[32] A.T.A.'s Air Transport Facts & Figures (10th Ed.), 9.
[33] *Ibid.*
[34] Kelly, *op. cit. supra* note 30, at p. 3.
[35] *Op. cit. supra* note 32. See also ACCIDENT FACTS (1948 Ed.), 77.

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